



**STATE OF DELAWARE**  
**Child Death, Near Death and Stillbirth Commission**  
900 King Street  
Wilmington, DE 19801-3341

## **CAPTA<sup>1</sup> REPORT**

In the Matter of  
Xander Burke  
Minor Child<sup>2</sup>

9-03-2011-00003

May 17, 2013

---

<sup>1</sup> The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

<sup>2</sup> To protect the confidentiality of the family, case workers, and other child protection professionals, pseudonyms have been assigned.

## **Background and Acknowledgements**

The Child Death, Near Death and Stillbirth Commission (CDNDSC) was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child's death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

## **Case Summary**

The male child who is the subject of this review, Xander Burke, was born in March 2007 to mother, Julia Edler. Child was born via spontaneous vaginal delivery at 34 weeks gestation, weighing four pounds fourteen ounces. At birth, Xander presented with no known congenital anomalies or abnormal conditions. Xander was admitted to the Neonatal Intensive Care Unit (NICU) for continued monitoring due to his premie status, but was eventually discharged into the care of his mother.

In February 2010, at two years of age, Xander was taken via ambulance to the hospital as a result of physical abuse perpetrated by mother's paramour. Upon physical examination, Xander was noted to have swelling of the upper lip, a small laceration to the inside of the upper lip, bite marks to the back of his neck, swelling and discoloration to his testis, bite marks to the upper left and lower right extremity, and petechia around both eyes, ears, and neck. Xander was transferred to the children's hospital where he was admitted for further evaluation and treatment. Upon examination by Delaware's Child Abuse Expert, it was determined that Xander's injuries were a result of nonaccidental trauma.

## **Family History:**

According to the Division of Family Services' (DFS) Family and Child Tracking System (FACTS) no history existed for Xander and/or family prior to Xander's near death incident.

Mother's only criminal history was a motor vehicle violation stemming from 2007. Conversely, paramour's criminal history was significant and related to drug offenses, robbery, theft, assault third, and numerous vehicle violations.

## **Xander's Near Death Event:**

In January 2010, Julia Edler took Xander to the Emergency Department (ED) of the children's hospital with the chief complaint of a head injury. Mother informed medical personnel that Xander had sustained his injuries from an unwitnessed fall off or against a chair in his bedroom. At the time of the incident, Xander was two years of age and residing in an apartment with mother and mother's paramour. Mother reported that paramour had gone into Xander's

bedroom to check on him only to find him on the floor and stunned. Bruising to Xander's face and to the back of his head immediately appeared and as a result, mother decided to take Xander to the ED. Upon arrival at the ED, a computed tomography (CT) scan was completed and revealed no signs of fractures and/or hematomas.

Three days later, Xander returned to the ED with complaints by mother of irritability and vomiting. During the medical examination, extensive bruising was noted to Xander's entire body; including but not limited to, his trunk, legs and face. The bruising to Xander's face was noted to be parallel and resembled finger-like marks. The bruising to Xander's body was not indicated on his chart from his previous visit, three days prior. Xander's mother again reported how Xander received his injuries. However, this time mother was told that her story was inconsistent with the injuries sustained by Xander. It was determined that Xander's injuries were a result of nonaccidental trauma and Xander was admitted for further evaluation and treatment.

That same day, the DFS Child Abuse Reportline received an urgent referral alleging the physical abuse of Xander. The report was accepted and a joint investigation between DFS and law enforcement began.

Upon Xander's discharge from the hospital, DFS implemented a safety plan with mother. The safety plan stated that contact between mother and child was to be supervised at all times by either maternal grandmother or paternal aunt. All parties agreed to this plan and were informed that such plan was to stay in effect until further notice by DFS.

Five days after Xander's second visit to the ED, mother's paramour was interviewed by law enforcement. Paramour advised that Xander had fallen out of his crib, onto a nearby chair, and then onto the floor. Paramour described Xander's bed as a toddler bed with a metal frame and a hard plastic headboard and footboard. The chair was solid wood and sized for a child around six years of age. The events of that day were then reenacted by paramour. It was during this reenactment that the detective was able to confirm that mother was sleeping and therefore, paramour was alone with Xander and the most likely person to have inflicted his injuries.

Two days following the interview of paramour, the Division of Family Services' caseworker was contacted by mother where she was re-advised of the stipulations to her safety plan. The caseworker advised mother that paramour was the primary suspect in the investigation and that no contact was to occur between Xander and paramour at the request of police. At this point in time, mother had informed the caseworker that she had further communication with Xander's initial treating physician. Mother had questioned the physician as to why a report was not made to DFS on the first night that Xander presented to the ED. The physician stated that she had considered making a report, but chose not to as she was unsure if there was enough evidence for the injuries to be ruled as a result of physical abuse.

Eleven days after Xander's near death incident, the Attorney General's Office authorized an arrest warrant for Assault in the Third Degree for paramour. Paramour had managed to elude police for several weeks. It was during this time, that mother had undergone a polygraph examination and passed. As a result, mother was released from her safety plan restrictions with the stipulation that the no contact order between Xander and paramour was to be upheld.

In February 2010, the morning of the near death incident, mother reported that she heard Xander repeating the word ice. When she tried to rouse herself and listen to what was happening with the ice she heard what sounded like coughing and choking noises. Mother went into Xander's room where she witnessed paramour with his hands around Xander's neck and Xander elevated off his bed. Paramour was holding Xander with his stomach against Xander's back and they were both facing the doorway. Mother ran over and grabbed Xander and then ran into the kitchen and called 911. Upon mother informing paramour that police were en route to the residence, paramour fled the apartment.

Shortly thereafter, law enforcement responded to the mother's residence. Upon arrival Xander was taken again to the hospital via ambulance. Mother informed law enforcement that paramour had been residing at her residence for some time. On that day, mother had walked into Xander's bedroom to find Xander being strangled by paramour. Xander was noted to have swelling of the upper lip, a small laceration to the inside of the upper lip, bite marks to the back of his neck, swelling and discoloration to his testis, bite marks to the upper left and lower right extremity, and petechia around both eyes, ears, and neck. Medical personnel noted that the bite marks were consistent to that of an adult mouth. Xander was transported to the children's hospital where he was admitted for further evaluation and treatment. It was determined that Xander's injuries were a result of non-accidental trauma. The injury to the genital area was caused by blunt force trauma and was likely caused by a kick that would have sent Xander flying across the room. A CT scan and skeletal survey were completed and no fractures were observed.

On the day of the near death incident, law enforcement contacted the DFS caseworker and informed the caseworker that Xander had been admitted to the hospital as a result of new injuries that he had sustained from mother's paramour. In February 2010, a new safety plan was implemented. The safety plan stated that maternal grandmother was to petition for guardianship of Xander and that no contact was to occur between Xander and his mother. Maternal grandmother agreed to these terms with the understanding that if contact between mother and Xander was to occur, and if Xander was to be harmed as a result of that contact, then DFS would file for emergency custody of Xander. At this point in time, maternal grandmother advised that she had contacted law enforcement the day before the incident informing them that mother's paramour was residing in the home. Despite paramour's warrants, he had yet to be taken into custody by law enforcement.

Paramour was finally apprehended in March 2010. He was charged with two counts of Assault in the Second Degree, Reckless Endangering in the First Degree, Endangering the Welfare of a Child, Malicious Interference, and Resisting Arrest. No charges were filed against mother, as she remained cooperative throughout the investigation and agreed to testify against paramour. At any point in time, if mother chose to no longer be cooperative or refuse to testify with the Attorney General's Office then mother would be charged. In January 2011, paramour was found guilty of Assault by Abuse and Neglect and Assault in the Second Degree and sentenced to 15 years, suspended after 10 years.

As a result of the joint investigation, DFS was able to substantiate paramour for physical abuse, level IV. Xander's mother was also substantiated for severe physical neglect, level III. As a result of the DFS investigation, the case was transferred to treatment in March 2010 for

ongoing services. Mother was instructed that she would need to complete a case plan, which would include the successful completion of parenting classes.

### **Primary System Recommendations**

After review of the facts and findings of this case, the Child Abuse and Neglect Panel determined that all systems did not meet the current standards of practice and therefore the following system recommendations were put forth:

### **DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES**

1. CDNDSC recommends that the Division of Family Services (DFS) re-evaluate the Safety Assessment and Safety Planning policy, training and use thereof.
  - a. Rationale: DFS had implemented a safety plan in January 2010; however, such plan was ineffective as mother was still allowing contact to occur between child and paramour, and supervision between mother and child by maternal grandmother and/or paternal aunt was lacking. The failure of this plan was made clear in February 2010, when mother witnessed Xander being strangled by paramour.
  - b. Anticipated Result: To evaluate the effectiveness of safety plans and assessments.
  - c. Responsible agency: Department of Services for Children, Youth and Their Families
2. CDNDSC recommends that the Division of Family Services revise its procedure for interviewing and assessing the safety of children residing in the household of the alleged perpetrator when this individual resided in a different household.
  - a. Rationale: The safety of perpetrator's children was never assessed. According to policy a safety assessment should have been conducted in order to gain additional information and assess whether or not children were possible victims.
  - b. Anticipated Result: compliance with policy when assessing the safety of all children who have contact with the alleged perpetrator.
  - c. Responsible Agency: Department of Services for Children, Youth and Their Families

### **DELAWARE POLICE DEPARTMENTS**

3. Delaware Police Departments shall adhere to 16 Del. C. § 903, §904, §905 and 24 Del. C. §1731A (a) when reporting child abuse and neglect via the Child Abuse and Neglect Reportline.
  - a. Rationale: Law Enforcement should have contacted the Child Abuse Reportline after being dispatched to mother's residence for an assault on a child in February 2010. Furthermore, on the day before this incident, when maternal grandmother reported that paramour was residing in the home law enforcement should have responded to the residence in order to check on the welfare of the child.
  - b. Anticipated Result: Compliance with Delaware law as it pertains to the reporting of child abuse and neglect.

- c. Responsible Agency: Delaware Police Departments

**MEDICAL**

- 4. Delaware Hospitals shall adhere to 16 Del. C. § 903, §904, §905 and 24 Del. C. §1731A
  - (a) when reporting child abuse and neglect via the Child Abuse and Neglect Reportline.
    - d. Rationale: When child was initially seen at the Emergency room on 1/14/10, the Emergency Room doctor had concerns of abuse but did not report because there was not enough evidence to support the concern. On follow up to the Emergency Room visit, the child's Primary Care Physician also failed to make such a report. According to law, one does not need absolute evidence to support the concern of abuse and or neglect in order to report. One only needs to "know or in good faith suspect child abuse or neglect" in order to report.
    - e. Anticipated Result: Compliance with Delaware law as it pertains to the reporting of child abuse and neglect.
    - f. Responsible Agency: Initial treating physician from the January 2010 Emergency Department visit.